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December 23, 2016

Hon. Joseph F. Bianco  
US District Court Judge  
US District Court  
920 Federal Plaza  
Central Islip, NY 11722

Re: *U.S. v. Kenner* 13-607 (JFB)

Dear Judge Bianco:

We submit this letter as comment to the pending Application for modification of the Protective Order issued in the above referenced matter (the "Application").

The supporting submissions for the Application include a Declaration of Kenneth A. Jowdy. The Declaration asserts numerous allegations against Mr. Kenner and provides a summary of the DCSL transaction. Mr. Kenner disputes many statements in the Jowdy Declaration. As such, we urge the Court to not consider these statements in making determinations regarding any matters pertaining to Mr. Kenner including: the forfeiture proceeding; Mr. Kenner's objections to the Presentence Investigation Report; and, sentencing. If necessary, Mr. Kenner stands ready to submit a full response to disputed portions of the Declaration. However, as we are not direct parties to the Application, at this stage, we do not seek to burden the Court with a point by point response to the Declaration. Accordingly, we respectfully request our silence not be construed as meaning we concur with all the statements in the Declaration. If the Court is inclined to give any consideration to these statements -- in making decisions in proceedings pertaining to Mr. Kenner -- then we respectfully request leave to submit a response in order to correct the record.

However, there is an ancillary matter -- brought to the Court's attention by counsel to the Application ---- which we seek to briefly address. The Memorandum of Law submitted in support of the Application indicates FBI Agent Galioto submitted an affidavit containing false allegations and "neither Agent Galioto nor the Government took any steps to correct the record." (Memorandum p.9). As the Court is aware, Mr. Kenner filed a *pro se* Rule 33 Motion for a New Trial based upon Governmental misconduct which, *inter alia*, claims the Government suborned perjury. Thus, this circumstance, as noted in the Memorandum of Law, appears to provide further support to the claim asserted by Mr. Kenner in his Rule 33 Motion.

Respectfully submitted,

/s/

Jeffrey G. Pittell

cc: Diane Leonardo, AUSA  
Saritha Komatireddy, AUSA  
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All counsel of record via ECF